Supreme Court, U.S.
FILED
JUN 2 1998

No. 97-1783

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

BARRY SCHIMMEL, *et al.*,
Petitioners,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF FOR RESPONDENTS IN OPPOSITION

JOSEPH GUERRIERI, JR.
(Counsel of Record)
DEBRA L. WILLEN
ANNA L. FRANCIS
GUERRIERI, EDMOND & CLAYMAN, P.C.
1331 F Street, N.W., Suite 400
Washington, D.C. 20004
(202) 624-7400
Counsel for Respondents

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether the court below correctly held that the officers of a labor organization, that no longer represents any employees nor administers any collective bargaining agreements, may not, consistent with their fiduciary obligations under Section 501 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 501, retain dues monies paid by the formerly-represented employees, where the union's constitution is silent as to the disposition of those funds.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
STATEMENT OF THE CASE	1
A. Preliminary Statement	1
B. Factual Background	3
REASONS FOR DENYING THE WRIT	8
CONCLUSION	14

TABLE OF AUTHORITIES

Cases	Page
Phillips v. Osborne, 403 F.2d 826 (9th Cir. 1968)	11-12
Sabolsky v. Budzanoski, 457 F.2d 1245 (3d Cir. 1972)	11
Statutes	
Labor-Management Reporting and Disclosure Act,	
29 U.S.C. § 501(a)	8, 9
29 U.S.C. § 501(b)	8
Legislative History	
H.R. Rep. No. 86-741 (1959), *reprinted in* 1959 U.S.C.C.A.N. 2318	9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-1783

BARRY SCHIMMEL, *et al.*,
Petitioners,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT OF THE CASE

A. Preliminary Statement

This case arises under Section 501 of the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 501, which imposes strict fiduciary duties upon union officials with respect to their members and to union funds and assets. At issue in this case is whether the five union officer petitioners may retain control over union members' dues monies following the union's loss of its sole collective bargaining certification. The union's constitution is silent on the proper disposition of the dues monies in the event of decertification. Nevertheless,

petitioners insist they are entitled to expend those funds on purposes that do not advance the formerly-represented employees' interests.

In February 1997, in a representation election conducted by the National Mediation Board ("NMB"), the flight attendants of Trans World Airlines ("TWA") voted overwhelmingly in favor of the International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM") to be their new collective bargaining representative. As a result, the NMB certified the IAM to replace the Independent Federation of Flight Attendants ("IFFA") as the collective bargaining representative of the TWA flight attendants. Following the change in representation, IFFA no longer represented any employees nor administered any collective bargaining agreements.

The respondents are the IAM and eight TWA flight attendant members of IFFA who became concerned that the IFFA Executive Board members would spend for their own purposes the dues monies paid by the TWA flight attendants if IFFA lost the representation election. The eight individual respondents are Claudia Davey, John Desmond, Robert Dionne, Kit Furness, Tamara Pierro, Pamela Pinard, Jill Radel, and Nina Rensenhouse. Petitioners are five IFFA officers who, in anticipation of losing the representation election, met secretly and voted to improperly restructure the union, retain all of the dues monies, and indemnify themselves for any potential liability in connection with this and other actions. Petitioners are Barry Schimmel, Flip Becker, Sheila McCann, Terry Fitzgerald, and Jerry Giustiniani.

Petitioners claim they intend to spend the dues monies in accordance with IFFA's constitution and by-laws. It bears emphasis though that the IFFA constitution, unlike most union constitutions, actually is silent as to the disposition of union funds following decertification. Indeed, rather than following the constitution, immediately prior to losing the election petitioners hastily adopted new "in-

terpretations" of the constitution and by-laws so that they could continue to expend funds to perpetuate their union offices.

After IFFA lost its right to represent the TWA flight attendants, the IAM and the individual respondents brought this action seeking an accounting of IFFA's funds and assets pursuant to Section 501 of the LMRDA. They further sought to have those funds and assets transferred to the IAM, as trustee, to be used on behalf of the TWA flight attendants or returned on a pro rata basis to those flight attendants.

B. Factual Background

IFFA was the collective bargaining representative for the TWA flight attendants from 1977 through March 6, 1997. The TWA flight attendants were the only employees IFFA represented and IFFA's only source of union dues. Appendix to the Petition for Writ of Certiorari ("Pet. App.") 8.

In August 1996, Sherry Cooper, the then President of IFFA, negotiated a tentative agreement for a merger between IFFA and the IAM. On October 16, the IFFA Executive Board rejected a motion that the merger proposal be submitted to the IFFA membership for ratification. Joint Appendix in the Court of Appeals for the Eighth Circuit ("J.A.") 266, 270.

Thereafter, the IAM engaged in an organizing campaign among the TWA flight attendants. The IAM obtained authorization cards from a substantial majority of the TWA flight attendants and petitioned the NMB for a representation election. The NMB ordered an election by mail ballot to commence on January 22, 1997 and scheduled a vote count for February 27, 1997. J.A. 413-14; Pet. App. 8-9.

On February 13, 1997, during an IFFA Executive Board conference call, IFFA officer petitioners passed a

resolution excluding then IFFA President Ralph Miller from Executive Board discussions concerning "the IAM raid, IFFA's defense and related matters." J.A. 358. Mr. Miller was absent from this conference call. This resolution was passed in direct contravention of Article V, Section 1 of the IFFA Constitution and Bylaws, which requires that the President preside at all Executive Board meetings. Mr. Miller was never advised that this resolution was passed. J.A. 274-77, 357-58; Pet. App. 55-56.

On February 20, 1997, during an Executive Board conference call conducted despite President Miller's unavailability, IFFA officer petitioners removed President Miller from the Constitution and By-Laws Committee and substituted petitioner Flip Becker in his place. Mr. Miller was never advised of this action. J.A. 277-78, 365-66.

On February 21, 1997, IFFA member respondents, Claudia Davey, John Desmond, Robert Dionne, Tamara Pierro, Pamela Pinard, Jill Radel, and Nina Rensenhouse, sent a letter to IFFA's Executive Board demanding an immediate accounting of the funds and assets of IFFA pursuant to Section 501 of the LMRDA. They further demanded that no additional funds or assets be expended and that such assets be held in trust for the benefit of the TWA flight attendants pending the outcome of the representation election. By letter dated March 1, 1997, respondent Kit Furness, also a TWA flight attendant and IFFA member, made an identical demand. Pet. App. 9-10.

On February 21, 1997, petitioner Barry Schimmel, IFFA's Secretary-Treasurer, advised President Miller that an Executive Board meeting would be held in St. Louis on February 25, but that Mr. Miller would not be permitted to attend. J.A. 276-77.

On February 25, President Miller sent a letter to Mr. Schimmel directing him to fully comply with the request of the individual respondents for an accounting and safe-

guarding of IFFA's assets. Instead, on that same day, IFFA notified the individual respondents that it would not process their request for an accounting unless they provided information regarding a specific breach of fiduciary duty. J.A. 208, 346; Pet. App. 10.

On February 25, 1997, the IFFA officer petitioners convened an Executive Board meeting in St. Louis, without the participation of President Miller. The petitioners passed twenty-seven resolutions that day, including resolutions adopting the "interpretations" of the Constitution and By-Laws Committee. J.A. 209-10.

Specifically, petitioners passed a resolution changing the purposes of IFFA to insure their own survival as union officers. In light of the fact that IFFA would no longer have any collective bargaining or grievance handling responsibilities if it lost the representation election, petitioners adopted a new principal purpose for IFFA: organizing other airline employees. Then, in a further effort to retain their own offices, petitioners adopted an "interpretation" that radically altered the definition of "membership" so that it would include, for the first time, persons who no longer worked under an IFFA agreement and part-time union officials. J.A. 370, 377-78; Pet. App. 40-44.

At the February 25 meeting, petitioners also voted to pay themselves for unused vacation time, to indemnify themselves for any losses incurred in connection with ongoing litigation, and to expend funds to organize the flight attendants employed by Continental Airlines. J.A. 369, 371, 385, 387; Pet. App. 10.

On February 27, 1997, the ballots in the representation election were counted. The IAM won the election by an overwhelming majority. Of the 5,139 flight attendants eligible to vote, 2,886 flight attendants voted for the IAM, 1,078 flight attendants voted for IFFA, and 657 flight attendants voted for other representation. The day after the election, petitioner Barry Schimmel transferred at least

$700,000 of IFFA funds into new accounts. That same day, IFFA instituted a civil action against respondents IAM and the individual IFFA members and sought an order enjoining them from initiating any legal proceeding to obtain an accounting and from filing a legal action in this case. Pet. App. 10-11, 11 n.4.

On March 3, 1997, the IAM and the eight individual respondents requested leave to file an action against the petitioners in the United States District Court for the Eastern District of Missouri, alleging that they had breached their fiduciary duties as union officers in violation of Section 501 of the LMRDA. Respondents further requested that the court issue a temporary restraining order and a preliminary injunction. Pet. App. 22.

On March 6, 1997, the NMB certified the IAM as the exclusive collective bargaining representative of the TWA flight attendants. Pet. App. 12.

The Honorable Judge Jean C. Hamilton held a hearing on respondents' motion for a preliminary injunction on March 11, 1997. On April 9, 1997, Judge Hamilton issued a memorandum and order denying respondents' request for preliminary injunctive relief. The district court held that the IAM did not have standing under the LMRDA to sue IFFA. The district court further found that, for the purposes of the preliminary injunction, the IFFA member respondents had standing but they were not entitled to preliminary injunctive relief. Pet. App. 23, 26-37.

Respondents IAM and the individual IFFA members appealed the district court's denial of preliminary injunctive relief to the United States Court of Appeals for the Eighth Circuit. The Court of Appeals, in a unanimous opinion, reversed the district court's decision. The Eighth Circuit held that the individual respondents were entitled to a preliminary injunction and, therefore, did not address the issue of whether or not the IAM had standing to sue under the LMRDA. Pet. App. 12.

The Court of Appeals found, as a matter of law, that in the absence of a constitutional provision providing for the disposition of union funds upon the loss of IFFA's sole certification, Section 501 precluded petitioners from retaining the flight attendants' dues monies. The Court of Appeals also reversed the district court's legal conclusion that individual respondents could not prevail on their Section 501 claim because it was based upon a breach of duty owed to the membership as a whole, rather than IFFA. Pet. App. 13-15.

More specifically, the Eighth Circuit found that the individual respondents had alleged a specific breach of fiduciary duty in their demand letter. Unlike most other unions, IFFA had not provided in its constitution for the disposition of union funds in the event of a decertification. Given that no such provision existed, petitioners could not, consistent with their fiduciary duties under Section 501, retain the dues monies paid by the TWA flight attendants and use those funds for purposes which did not advance the flight attendants' interests. The Court of Appeals read the individual respondents' demand letter as charging petitioners with a breach of their fiduciary duty to preserve and use the dues monies solely for the TWA flight attendants. Pet. App. 13-14.

Additionally, the Court of Appeals below found that there was a likelihood of success on the merits of the individual respondents' Section 501 claims. The Eighth Circuit specifically reversed the district court's legal holding that the individual respondents could not prevail on their claims because they had not brought suit on behalf of the union. Noting that the individual respondents had brought suit for the benefit of the membership as a whole, the Court of Appeals held that in this unique case, where a union's members are a single group of employees who work for the same employer, the interests of those members are indistinguishable from the interests of the union. Pet. App. 15-16.

Having found a likelihood of success on the merits, the balance of equities required preliminary injunctive relief to insure that flight attendant dues monies were not expended on matters that did not advance the flight attendants' interests, including organizing of other flight attendant groups. Pet. App. 16-18.

The Court of Appeals reversed the district court's decision and remanded the case for a determination of the amount of funds IFFA needed to complete its representation and a determination of the amount of funds that were not derived from dues monies, which IFFA was entitled to keep. All remaining dues monies were to be transferred to the IAM, as trustee only, for distribution to the TWA flight attendants. Pet. App. 19.

REASONS FOR DENYING THE WRIT

1. The Court of Appeals below properly held that the individual IFFA member respondents stated a claim pursuant to Section 501 because they alleged that petitioners breached a duty owed to IFFA's membership. The Eighth Circuit's holding in this regard is fully supported by the express language and legislative history of Section 501.

Section 501(a) of the LMRDA imposes a fiduciary duty upon union officers that is owed to both the union *and its members.* Section 501(a) states "[t]he officers . . . of a labor organization occupy positions of trust in relation to such organization *and its members as a group.* It is, therefore, the duty of each such person . . . to hold its [the union's] money and property solely for the benefit of the organization *and its members.* . . ." 29 U.S.C. § 501 (a) (emphasis added). If a union officer breaches his or her fiduciary duty, Section 501(b) provides union members with a remedy to recover for the breach. A union member may institute a civil action to "recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization." 29 U.S.C. § 501(b).

Congress' intent to impose a fiduciary duty upon union officers, that is owed to the union members, is fully demonstrated in House Report No. 741. House Report No. 741 states, "[t]he members of a labor organization are the real owners of the money and property of such organizations and are entitled to a full accounting of all transactions involving such money and property." H.R. Rep. No. 86-741, at 7 (1959), *reprinted in* 1959 U.S.C.C.A.N. 2318, 2324. The individual respondents sought such an accounting for the benefit of all of IFFA's members.

House Report No. 741 further states, "[b]ecause union funds belong to the members they should be expended only in furtherance of their common interest. A union treasury should not be managed as though it were the private property of the union officers, however well intentioned such officers might be, but as a fund governed by fiduciary standards." *Id.* at 7-8. Here, the individual respondents sought an accounting precisely because they were concerned that IFFA officers would continue to spend the TWA flight attendants' dues monies for their own interests if IFFA lost the representation election.

The Court of Appeals for the Eighth Circuit correctly rejected the notion that the individual respondents could not prevail because they did not seek relief on behalf of IFFA. In circumstances such as these in which recovery is sought on behalf of the entire membership, the Court of Appeals concluded that "bringing suit for the benefit of the labor organization was indistinguishable from bringing suit for the benefit of the real owners of the union funds—the TWA flight attendants." Pet. App. 15.

In its opinion, the Court of Appeals expressly relied upon House Report 741. *Id.* The decision unequivocally comports with Congress' view that union funds belong to the members and should only be spent to advance their interests. The decision is also fully consistent with the statutory language of Section 501(a).

IFFA officer petitioners repeatedly assert that this action was brought for and benefits the IAM. Petition for Writ of Certiorari ("Pet.") 15, 18. To support this argument, petitioners claim that the complaint seeks to have IFFA's assets transferred to the IAM and that the Court of Appeals' decision gave the IAM control over IFFA's assets. Pet. 15, 18.

This simply is not supported by the record. First in their complaint, respondents IAM and the individual IFFA members sought the transfer of the remaining funds to the IAM only as trustee; the transferred funds were to be held for the benefit of the TWA flight attendants or to be distributed to the TWA flight attendants on a pro rata basis. J.A. 20. Second, the Court of Appeals' decision transfers only the remaining dues monies to the IAM and not all of IFFA's assets. Pet. App. 19. Third, the dues monies are transferred to the IAM for return to the flight attendants. Indeed, the IAM does not stand to gain a single dollar from IFFA's treasury. Pet. App. 19.

The dues monies IFFA held were paid by the TWA flight attendants with the expectation that those monies would be used for contract administration and collective bargaining on their behalf. When IFFA lost its certification to represent the TWA flight attendants, the petitioners intended to continue to use those monies to pay themselves salary and benefits. To justify keeping their union offices, officer salaries, and benefits, petitioners determined that IFFA would have a new principal purpose: organizing the flight attendants at Continental Airlines. The Court of Appeals below recognized that the expenditure of the TWA flight attendants' dues monies for such purposes did not advance their common interests. In this regard, the Court of Appeals' decision further effects Congress' intent that union officers not be permitted to manage a union treasury as if it were their own property.

Moreover, the decision below is in conformity with the principles set forth by the Court of Appeals for the Third Circuit in *Sabolsky v. Budzanoski*, 457 F.2d 1245 (3d Cir. 1972). In *Sabolsky*, the court held that a cause of action existed under Section 501 when union officers spent union funds to maintain non-functioning locals solely to preserve the officers' political power. *Id.* at 1248-51. In the instant case as well, petitioners seek to spend IFFA's treasury solely for the purpose of maintaining their union offices.

Rather than address the statutory language, legislative history, and precedent that support the decision below, petitioners argue that the decision in this case conflicts with the decision of the Court of Appeals for the Ninth Circuit in *Phillips v. Osborne*, 403 F.2d 826 (9th Cir. 1968). Pet. 11-18. That simply is not the case.

In *Phillips*, a local union voted to disaffiliate from its international and join another union. Prior to the vote, the local's officers had placed the local's assets within the control of the international as a defensive measure. After the local disaffiliated from the international, the new local president sued the former local officers for breach of fiduciary duty to recover the local's assets for the former members of the local. The Ninth Circuit concluded that the suit was not brought on behalf of the union. *Phillips*, 403 F.2d at 832.

Petitioners' claim that *Phillips* conflicts with the decision in this case cannot withstand scrutiny. In *Phillips*, the union had numerous locals representing over 170,000 employees in the United States and Canada. *Id.* at 827. In that case, distributing union funds to one distinct group of former union members could not be for the benefit of the union as a whole nor the entire membership as a group. Moreover, the former local's assets could be utilized by the international union to advance the interests of the remaining union members.

Phillips addresses the demise of a local within an international union representing employees in several different collective bargaining units, a situation not uncommon among unions. It does not address the unusual situation presented here, where a union that represented a single craft or class of a single employer lost its sole certification. The petitioners cannot claim that in this particular situation, the Court of Appeals for the Ninth Circuit would have reached a different outcome than the Court of Appeals below. Accordingly, there is no conflict between the Eighth and Ninth Circuits.

2. Petitioners further argue that the lower court did not properly defer to their interpretation of IFFA's constitution regarding the union's mission and, as a consequence, IFFA will be forced to cease its existence. Pet. 24-28. Respondents do not dispute that judicial deference to a union's interpretation of its constitution is appropriate. Pet. 25-26. However, the petitioners would have had the lower court defer not to the union's long-standing interpretation of its constitution, but rather to their own hastily-adopted reinterpretation of the union's purposes on the eve of the loss of certification.[1]

In fact, the Court of Appeals for the Eighth Circuit expressly looked to IFFA's constitution in reaching its decision. The Court of Appeals noted that "[g]enerally, unions provide for the disposition of union funds upon decertification or dissolution in their constitution or by-laws. In such situations, the contract between the union and its members provides the mechanism to dispose of

---

[1] Organizing other flight attendants was not previously one of IFFA's purposes. At the preliminary injunction hearing, the founding President of IFFA, Arthur Teolis, testified that IFFA was created for the purpose of providing a union that solely represented the TWA flight attendants. J.A. 262. Mr. Teolis further explained that IFFA had engaged in only one attempt at organizing, at the now defunct Air Florida, in early 1980. The TWA flight attendants vehemently opposed and resented the organizing effort at Air Florida and IFFA never attempted organizing again. J.A. 263.

union funds." Pet. App. 14. In this unique situation, however, the Court of Appeals found that "IFFA made no provision for the disposal of union funds in the event its only members elected a new bargaining representative." *Id.* Only after referring to IFFA's constitution and discovering that no such provision existed, did the Court of Appeals rely upon principles of equity to dispose of the dues monies.

Additionally, petitioners' contention that the lower court's decision required IFFA to cease functioning simply lacks merit. Pet. 27. The decision only prohibits petitioners from using the TWA flight attendants' dues monies for purposes that do not advance their interests. If petitioners wish to maintain IFFA as an organization, they may do so using funds derived from other sources. Indeed, the Court of Appeals below specifically stated IFFA has the right to retain funds derived from other sources. Pet. App. 18 n.7, 19.

3. The petitioners also contend that the Court of Appeals for the Eighth Circuit placed undue restrictions upon IFFA's right to use union funds for organizing purposes. Pet. 19-24. They argue that the Court of Appeals' decision imposed "a fiduciary duty upon IFFA's officers to refrain from the expenditure of union funds on organizing activities. . . ." Pet. 24. They further contend that the lower court departed from the judicial deference generally shown a union in the regulation of its own affairs.

It bears emphasis, however, that the Eighth Circuit only limited the petitioners use of the dues monies paid by the TWA flight attendants for matters that did not advance their interests. The Court of Appeals did not limit petitioners' use of other funds for organizing. Pet. App. 17-18, 18 n.7. The lower court's narrow opinion thus impacts IFFA's internal affairs only to the extent necessary to remedy the breach of fiduciary duty committed by petitioners.

CONCLUSION

This case presented the Court of Appeals for the Eighth Circuit with unusual circumstances not likely to be repeated. Specifically, this case involves a labor organization that no longer represents any employees as a result of the loss of its sole certification, and a union constitution that, unlike most others, does not provide for the disposition of dues monies in the event of a decertification. The Eighth Circuit's decision addresses only this narrow set of facts. That decision is carefully drawn from and fully supported by the statutory language and legislative history of Section 501. Moreover, the legal principles set forth by the Court of Appeals for the Eighth Circuit clearly do not conflict with decisions rendered by other circuits. Finally, the decision demonstrates appropriate judicial deference to a union's regulation of its own affairs, interfering only to the extent necessary to remedy a breach of fiduciary duty. Accordingly, we respectfully request that the Court deny the petition for writ of certiorari.

Respectfully submitted,

JOSEPH GUERRIERI, JR.
(Counsel of Record)
DEBRA L. WILLEN
ANNA L. FRANCIS
GUERRIERI, EDMOND &
CLAYMAN, P.C.
1331 F Street, N.W., Suite 400
Washington, D.C. 20004
(202) 624-7400
Counsel for Respondents